

## Guidance

# Supplemental Ofgem Guidance on the Determination of Disputes: Gate 2 to Whole Queue

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This document is our<sup>1</sup> guidance for disputes and determinations in relation to the Gate 2 to Whole Queue (G2tWQ) exercise. It has been finalised following a period of consultation in November 2025. A decision document has also been published which may be read to understand the background to this document's development.

This guidance outlines the Authority's expectations of disputing parties and the issues upon which Ofgem is prepared to make a binding decision i.e. a determination. Disputing parties should therefore read this document in full before approaching the Authority with a request to resolve a dispute following the G2tWQ exercise.

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<sup>1</sup> References to the "Authority", "Ofgem", "we", "our" and "ourselves" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

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## Introduction

### Context

The TMO4+ reform package, approved by Ofgem in April 2025, has enabled a new connections process that reformed the existing queue to prioritise those projects in a firm Gate 2 connections queue that are 1) ‘ready’ and 2) ‘needed’ (i.e. meeting ‘Strategic Alignment Criteria’) under the CP2030 Action Plan. The reforms also move projects that do not meet these criteria to an indicative Gate 1 queue. These projects can reapply once they consider they have met the criteria. New projects applying will also need to meet ‘Readiness Criteria’ and ‘Strategic Alignment Criteria’ to be eligible to join the Gate 2 connections queue.

These reforms have led to the creation of a rationalised connections queue, aligned with the CP2030 Action Plan.

### Amendments to Existing Connection Agreements

The National Energy System Operator (NESO) as the independent electricity system operator, with the support of the Distribution Network Operators (DNOs) and Transmission Owners (TOs), is operationally responsible for the processing of connection applications and related decisions. This includes assessing connection applications against the new criteria (as outlined in the Gate 2 Criteria Methodology), queue formation and the issuing of new connection offers (i.e. Gate 1 or Gate 2 connections offers).

The Gate 2 to Whole Queue (G2tWQ) exercise will result in existing contracts being varied.

Projects that meet the criteria will receive a Gate 2 Modification Offer, which will result in changes or revisions to the existing connection agreements, including potentially terms such as timelines. Those that do not meet the Gate 2 Criteria will be issued with a Gate 1 Agreement to Vary or ‘ATV’.

### Purpose

This document sets out, for all parties involved in the G2tWQ process, the approach and procedures that the Authority will apply to determination requests arising from the G2tWQ exercise.

Section 1 provides an overview of the Authority's determination function in relation to the G2tWQ exercise.

Section 2 outlines our position with regards to the disputes the Authority will consider following new contract terms being offered, the actions that disputing parties must take before approaching the Authority with a request for a determination, and the limit on potential outcomes from a successful determination.

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Section 3 outlines the procedure for parties to follow if they wish to raise a determination and the information that must be provided for the Authority to assess the request for a determination.

Any disputing party submitting information to raise a determination should familiarise themselves with this guidance, including both the procedures and approach, to ensure that eligible requests for determination can be assessed promptly.

Any determination requests that do not include a fully completed pro-forma (published separately to this document) together with the information set out in this guidance, will not be processed until such time as all relevant information has been provided.

## **1. Ofgem's Determination Functions and G2tWQ**

- 1.1 Disputes can be referred to the Authority through a number of different routes under the Electricity Act and Licences. It is important that parties understand the nature – and limits – of our various functions in this area. This section provides information on *when* Ofgem can determine disputes and outlines the Authority's ability to resolve G2tWQ disputes through the determinations process.
- 1.2 The functions set out below relate to the adjudication of disputes about the terms of connection agreements. This means that even if the dispute does fall within the narrow range of matters that the Authority can determine, parties will not be able to seek a determination until after the new disputed agreement has been issued.

## **System Operator Licence**

- 1.3 For transmission connections, under the conditions of the Electricity System Operator Licence, Ofgem may, at its discretion, settle disputes between NESO and parties who have, or are seeking, a connection to the transmission system. This extends to settling disputes about the variation of existing Bilateral Agreements and Construction Agreements. Under E13.5, where either party proposes to vary an existing agreement in any manner provided for under that agreement, the Authority may “at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable”. Our powers to settle disputes also extend to examining the terms of the associated transmission offer i.e. those contained within a Transmission Owner Construction Offer (TOCO). However, it should be noted that disputes between TOs and NESO should continue to be referred to us separately under the System Operator Transmission Owner Code.
- 1.4 This route is available to parties who have an agreement with NESO. These parties will also be signatories to the CUSC, and will therefore, in certain circumstances, be able to use the specific dispute resolution mechanism that the CUSC provides for disputes arising from the G2tWQ exercise. Given the availability of a robust dispute resolution mechanism in the CUSC, the Authority does not expect to

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exercise its discretion under E13.5 to resolve disputes unless our intervention is warranted (e.g as outlined in para 2.7).

### **Distribution**

- 1.5 For distribution connections, DNOs have a “duty to connect” under s16 of the Electricity Act. Under s21, the connection offer made by a DNO to a person wanting to connect can contain “any terms which is reasonable in all the circumstances for that person to be required to accept.” The Authority can resolve disputes about variations to these contracts under:
- s23 Electricity Act 1989, which provides that any dispute arising under ss16-21 (a dispute about whether the terms offered were “reasonable”, for example) can be referred to the Authority, and upon such a reference “shall be determined by order”; and
  - SLC 7.10 of the Distribution Licence, which provides that if either party proposes to vary the terms of an agreement entered into under SLC7.1 (i.e. an agreement for connection under ss16-21 of the Electricity Act), the Authority may, at the request of either party, “settle any dispute relating to the variation in such a manner as appears to the Authority to be reasonable in all the circumstances of the case.”
- 1.6 Final decisions about whether a project has met the Gate 2 Criteria are made by NESO, applying the methodologies approved by Ofgem in the TMO4+ Decision. Therefore, as described in Section 2, the role of DNOs is limited.
- 1.7 Ofgem recognises that, unlike its dispute resolution function under the System Operator Licence, the determinations function under s23 is mandatory. However, in the context of G2TWQ, the scope of matters that can be decided under s23 is very limited. While disputes “shall” be determined by the Authority, those disputes must relate to matters arising under s16-21. As noted, this means that s23 relates only to disputes between DNO and their customers, and should not include disputes about decisions that have been made by NESO and correctly implemented by DNOs. We therefore expect parties seeking a determination under s23 to provide clear evidence that the DNO (not NESO) has made a clear error, or has otherwise failed to follow the Gated Application Process as set out in the CUSC and the Distribution Licence.

## **2. Determination Approach: Gate 2 to Whole Queue**

### **Step 1: Alternative Dispute Resolution**

- 2.1 Our current guidance on the determination of disputes is clear that the Authority’s expectation is that parties must explore other means of resolving the dispute

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before it will exercise its determination function. This will remain the case for disputes arising from the G2tWQ exercise.

- 2.2 DNOs and NESO have procedures in place to deal with complaints and to remedy errors were they to arise. If parties wish to dispute the decisions made by NESO or the DNOs, the fastest and most efficient way to reach a resolution will be to deal with these bodies directly. Where this fails, and the dispute relates to whether the existing agreement application is effective, or the Gate 2 Criteria have been met, Section 18 and Section 7.4 of the CUSC require CUSC parties to follow a formal dispute resolution mechanism. This process requires senior-level meetings between the parties' representatives. If unresolved, either party may also refer the dispute to the London Court of International Arbitration (LCIA).
- 2.3 Therefore, before an approach to the Authority is made to resolve a dispute or for a determination, parties should take the steps set out in 2.4 or 2.5 below.
- 2.4 For disputes relating to variations of agreements with DNOs, parties must:
- Undertake informal engagement with the DNO;
  - Use the internal complaints process of the DNO;
  - Where the disputed decision is made by NESO, raise the dispute via the "Other disputes" framework set out in the CUSC, where available;<sup>2</sup>
- 2.5 For disputes relating to variations of agreements with NESO, parties must:
- Undertake informal engagement with NESO;
  - Raise the dispute via NESO's complaints processes;
  - Engage with NESO using the "Other Disputes" framework set out in the CUSC, where available;
- 2.6 Outside of the above, there may be other ADR routes available that are appropriate for the disputing parties specific to that case. We encourage those routes to be explored before an approach is made to Ofgem for a determination.
- 2.7 The CUSC 'Other Disputes' framework allows either party to refer the dispute for arbitration at the LCIA, and we encourage parties to consider doing so where appropriate. However, the Authority acknowledges that arbitration is not mandatory, and that it may not be preferred by the parties in all cases. Therefore, if the dispute remains unresolved after the "Initial Discussions" phase is completed<sup>3</sup>, and has not been referred to the LCIA, either of the disputing parties may, at that stage, refer the dispute to Ofgem for a determination.

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<sup>2</sup> See sections 8.9, 8.11, 8.14 and 8.15 [Gate 2 Criteria Methodology \(April 2025\) \(1\).pdf](#)

<sup>3</sup> CUSC – section 7.4

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- 2.8 As per the mandatory pre-requisite information listed in Section 3, the disputing party must produce evidence that they have attempted to resolve the dispute through alternative means before requesting a determination by Ofgem (for example, a deadlock or final position letter).

### **Step 2: Disputes for Determination**

- 2.9 The Authority expects to only consider exceptional cases, such as those where the NESO or DNO has breached its regulatory obligations or has failed to resolve an error.
- 2.10 It is appropriate, and in the best interests of consumers that NESO, as the independent electricity system operator, has discretion to determine which projects meet the readiness and strategic alignment criteria: it is empowered to decide which projects should receive Gate 2 Offers, in accordance with the rules approved by the Authority. DNOs should then correctly implement those decisions in the agreements they have with their customers.
- 2.11 In general, therefore, Ofgem's position is that parties will not be able to request a determination simply on the basis that they disagree with NESO's decision about the status of their project and/or a DNO's implementation of that decision in a Connection Agreement. Instead, the Authority will only intervene in cases where a party can produce objective evidence that the process has not been correctly followed or some other error has been made. For example, to dispute a Gate 1 or 2 Agreement, parties will have to provide evidence that the offer is the result of a material error or other unauthorised departure from the approved process by the relevant decision-maker.
- 2.12 The Authority will also not consider the following complaints through determination:
- The TMO4+ decision itself, which includes the proper implementation of the policy aspects of the decision, the underlying policy design and the strategic plans being implemented by NESO (e.g the Clean Power 2030 Action Plan and associated capacity limits).
  - The reversal of a position where the Authority has already given direction or comfort to a licensee since the TMO4+ decision.
  - Advancement is not achieved, i.e. where a project does not receive the accelerated connection date originally sought.
- 2.13 The Authority's presumption will be that the new varied terms offered as a result of the G2tWQ exercise are reasonable. Terms will be presumed as reasonable unless they amount to a breach of NESO and/or DNOs' regulatory obligations, i.e. where the DNO or NESO has erred in some way, or has failed to correctly follow the rules of the approved process as laid out in the CUSC and the Electricity Licence conditions. As noted above, parties must take the steps listed at 2.4 or 2.5 before approaching the Authority with a request for a determination.

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2.14 Any requests that the Authority receives that are assessed as not being a determination will be handled as correspondence.

### Electricity Act 1989, s23

2.15 The role of DNOs in the G2tWQ exercise is limited. Their role is to ensure that evidence has been assessed to a sufficient standard and that the queue realignment determined by NESO is accurately reflected in the connection agreements that they have with the customers on their networks. It is important for parties to note that disputes about decisions made by NESO (e.g. decisions about whether a project meets the Gate 2 Criteria) cannot be raised under s23. Ofgem can only make orders under s23 that require DNOs comply with the duties of distributors under ss16-21<sup>4</sup>. This means that:

- Section 23 disputes can only be raised by projects that have agreements with a DNO (i.e. are not directly connecting to the transmission system);
- Section 23 cannot be used by distribution-connected parties to challenge NESO's decision-making about the status of their project or other alleged acts or omissions by NESO;
- A DNO connected party will only be able to raise a determination under this section if it can show that there has been an act or omission by the relevant DNO which represents a breach of the approved process or their regulatory obligations and duties. This could include for example, a failure to progress the customer's application to NESO, or a failure to correctly reflect the terms of NESO's offer in the agreement it offers to its customer.

### Gate 1 Terms

2.16 The Authority has already approved the introduction of indicative terms of connection for projects that do not meet the Gate 2 Criteria. Effective implementation of TMO4+ requires that projects that do not meet the readiness or strategic alignment criteria are issued with "indicative" terms. As previously noted, a party will therefore not be able to argue that the changes to the terms it has been offered are "unreasonable" under s21 of the Electricity Act just because they are Gate 1 terms: Ofgem's presumption is that the change in terms to bring into effect a Gate 1 agreement are reasonable.

2.17 To displace this presumption, a party requesting a determination will have to show that the process that led to the production of the Gate 1 terms was flawed because of an act of error or omission by NESO or a DNO (i.e. a failure by the DNO to implement the reforms in accordance with the rules approved by the Authority).

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<sup>4</sup> See [CMP435-Final-Decision.pdf](#) for more on the modification process on current connection agreements.

### **Step 3: Outcome**

- 2.18 Under the Electricity Act and Licences, the Authority has relatively broad powers to settle a dispute in any way that it thinks reasonable in the circumstances. In general, any order we make will require the DNO or NESO to comply with its statutory duties (in the case of a DNO) or the relevant conditions of its licence (in the case of NESO); and while our discretion is broad within those bounds, we cannot order these parties to do anything beyond what the relevant provisions require.
- 2.19 While the Authority's discretion is broad, the exceptional nature and timing of the G2tWQ exercise means that there are practical constraints that will limit the beneficial outcomes that the Authority can direct in this context, even in cases where we find in favour of the applicant. This could be due to operational timing of key mechanisms contained within the new reform regime, e.g. when the next application window opens.
- 2.20 The timescale for reaching a determination can vary significantly depending on the complexity of the case. All parties must be fairly heard, and this means that the Authority is required to carefully consider all evidence and arguments submitted by both parties to the dispute. We are also required to provide reasons for our decisions. This process can take many months to complete, despite our best endeavours to expedite it. As noted above, timeframes are extended in this case by the fact that Ofgem can only open a determination at the final stage of the process, after new contract terms have been issued.
- 2.21 The result is that the time-limited, one-off nature of the G2tWQ exercise, and timescales of the determination process, mean that the range of workable beneficial outcomes available at the end of the process is likely to be limited in cases where we find in favour of the applicant. For example, it is unlikely that the Authority will be able to direct re-insertion into the connection queue ahead of the next evidence window due to the timescale for reaching a determination. By the time any determination decisions are made, any re-ordering of the queue would likely cause widespread disruption, including to other projects in receipt of a Gate 2 Offer.
- 2.22 It is therefore in the best interests of all parties to recognise the limits of the beneficial outcomes available through determinations, and to act as quickly as possible to resolve any disputes arising from the G2tWQ exercise through ADR.
- 2.23 While there may be practical limits to the available beneficial outcomes, the Authority will, in the event that it does determine disputes about the variation of existing connection contracts, endeavour to reach a decision as quickly as possible, and to arrive at an outcome that is fair and equitable to affected parties.

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- 2.24 If there is a successful determination decision, the Authority will consider viable outcomes within the limits of our powers. These would depend on the particular facts of the case. It would not, however, include any financial compensation.
- 2.25 Ofgem will continue to explore with decision-making entities the different outcomes that could be available and examine their feasibility, in the event a party is successful at determination. We will inform stakeholders when this is completed, and we may update this guidance accordingly.

## **3. Determination Procedure: Gate 2 to Whole Queue**

### **Requirements for a determination request relating to G2tWQ**

#### **Request for a Determination**

- 3.1 To raise a determination request, the requesting party must complete the determination request pro forma which includes providing the following information:
- Full name of the disputing party (Companies House checks will be undertaken).
  - Name of party that is subject to the dispute i.e. NESO or DNO.
  - A copy of the gated connection offer (as a request for determination can only be raised with the Authority where a contract is proposed to be varied).
  - Details of the complaint.
  - Supporting evidence of the alleged error or other failing.
  - Evidence that ADR routes have been exhausted e.g a deadlock letter has been issued by NESO or the relevant DNO.
- 3.2 The request must then be sent to the Determinations Gateway.
- 3.3 The determinations process can vary, as outlined in Section 2, therefore the ADR routes described above will be the quickest route for a resolution for parties to raise a dispute. However, in the event that any other means of resolving the dispute have been exhausted and resolution has not been possible, then a request for a determination should be raised with the Authority as soon as possible, but no longer than 30 days after the appropriate ADR routes have concluded.
- 3.4 This will support the Authority's ability to undertake timely actions to issue decisions in the G2tWQ environment, including directing viable outcomes within the limits of our powers for successful determinations.

## Determinations Gateway

- 3.5 We have created a centralised gateway for all determination requests to be submitted to the Authority. This will require parties to submit requests to a specified email address below:
- [Connectionsdeterminations@ofgem.gov.uk](mailto:Connectionsdeterminations@ofgem.gov.uk)
- 3.6 Any request will require a prescribed minimum amount of information, as set out above. The determinations pro forma aligns with the pre-requisite information outlined in paragraph 3.1 above.
- 3.7 If a request for a determination is sent outside this facility, it will not be accepted and processed.

## Oral Hearings

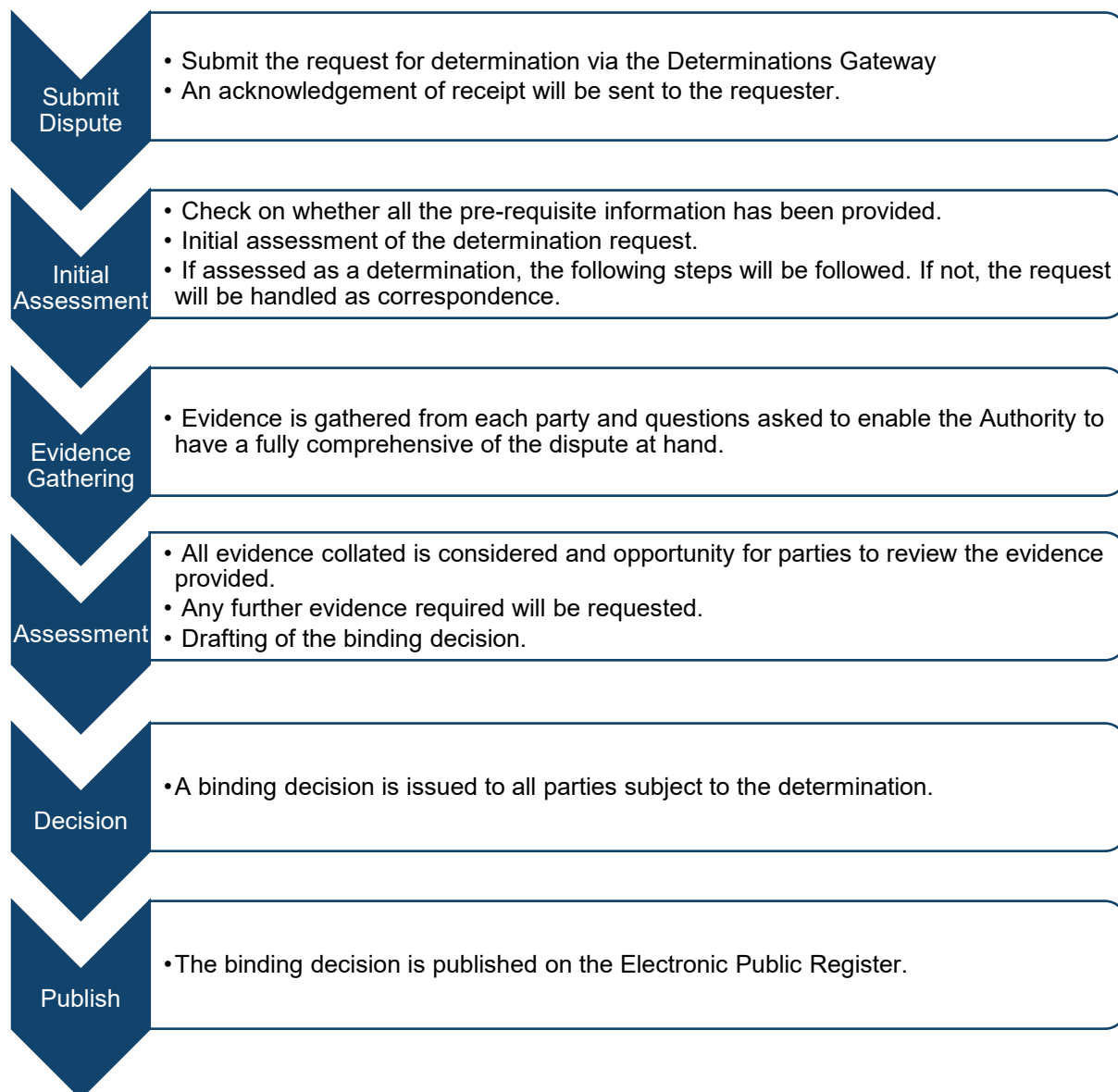
- 3.8 The Authority requires that all parties to a determination present their evidence and answer any questions exclusively in writing. Any additional evidence must also be submitted in writing.
- 3.9 Consequently, oral hearings for disputes will not be held unless an extenuating circumstance can be shown. In exceptional circumstances where an oral hearing is held, paragraphs 2.15 – 2.16 of the 2017 Guidance will apply and in particular, no new evidence will be accepted orally.
- 3.10 Parties that request an oral hearing should note that the management of such an approach, if granted, will mean an extensive timeframe and would add to any cost recovery amount, should the Authority decide to claim for costs it has incurred in the administration of determinations.

## Cost recovery

- 3.11 S23(5) of the Electricity Act 1989 allows the Authority to recover the costs of making a determination. Ofgem's 2017 Determinations Guidance is to recover costs only where the actions of the parties have caused us to incur costs beyond what would normally be expected (e.g., by causing unnecessary delay, not attempting ADR, or deliberately withholding information). Ofgem has not previously recovered costs under this provision (though it should be noted that Ofgem does not currently deal with a high volume of disputes under s23).
- 3.12 The Authority is considering whether to change its approach to the recovery of costs for determinations arising from the G2tWQ exercise. If our approach changes, we will appropriately inform stakeholders of our intention to do so and provide details of that change. We may then update this guidance accordingly.

## Outline of Determination Procedure

Figure 1: Stages of a Determination request.



## Accessible format

### Submit dispute

Submit the request for determination via the Determinations Gateway. An acknowledgement of receipt will be sent to the requester.

### Initial Assessment

Check on whether all the pre-requisite information has been provided. Initial assessment of the determination request. If assessed as a determination, the following steps will be followed. If not, the request will be handled as correspondence.

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**Evidence Gathering.**

Evidence is gathered from each party and questions asked to enable the Authority to have a fully comprehensive of the dispute at hand.

**Assessment**

All evidence collated is considered and opportunity for parties to review the evidence provided. Any further evidence required will be requested. Drafting of the binding decision.

**Decision**

A binding decision is issued to all parties subject to the determination.

**Publish**

The binding decision is published on the Electronic Public Register.